IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3586 OF 2005
IN
FIRST APPEAL (ST.)NO.17524 OF 2005
WITH
CIVIL APPLICATION NO.3588 OF 2005
IN
FIRST APPEAL (ST.)NO.17532 OF 2005

The Municipal Corporation of
Greater Mumbai. ..Applicant.

V/s.

M/s.Larsen & Toubro Ltd. ..Respondent.

Mr.Xavier for applicant-B.M.C.

Mr. S.R.Trilokchandani i/b Manilal Kher Ambalal & co. for respondent.

CORAM: A.M.KHANWILKAR,J
DATE : JANUARY 17, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. There is delay of 265 days in filing of the appeal as computed by the office. The appeal is directed against the Judgment and decree dated 12th October, 2004. The applicant made application for obtaining Certified Copy of the order on 29th October, 2004. The certified copy of the decree was ready on 17th December, 2004 and was collected on 17th December, 2004. It is stated in paragraph-4 of

the application that certified copy of the oral order/Drawn-up Order/Judgment could not be collected as the said clerk had misplaced the court receipt. Ultimately, a fresh application came to be made for issuance of the Certified copy of the Judgment on 7th February, 2005 and the same was delivered on 6th April, 2005. After the certified copy of the Judgement was made available, papers were placed before Dy. Law officer to advise filing of the appeal. Simultaneously, a copy of the Judgment was also forwarded to the concerned Section of the Assessment Department of S-Ward who in turn opined that the matter should be carried in appeal. Thereafter, different steps were taken. Since the copy of the Judgment was received on 6th April, 2005,the decision to go in appeal was formally taken in April, 2005 and the papers were forwarded to legal department in April, 2005. It is stated in paragraph 5 of the application that the papers got mixed up in other case papers and the High Court Section lost track of the matter. Papers got eventually traced and steps were taken to file present appeal as well as companion appeals against other matters between the parties. It is stated in paragraph 5 of the application that the clerk who was handling papers is no longer in the employment of the respondent. He

had neglected to put up the papers before the Dy. Law Officer of the High Court Section or the concerned Assistant Law Officer of the High Court Section for drafting the Appeal in time. In my opinion, explanation offered in the said application makes out sufficient cause. Accordingly, the application deserves to be allowed.

3. Counsel for the respondent however is opposing this application on the argument that explanation offered is not sufficient cause and no specific dates and particulars are given in the application. However, I find substance in the submission canvassed on behalf of the applicant that the court should take lenient view in so far as prayer for condonation of delay made on behalf of the Corporation, Government Statutory as observed by the Apex Court in the cases of **State of Haryana V/s. Chandra Mani(AIR 1996 S.C.1623) and Special Tehsildar, Land Acquisition, Kerala V/s. K.V.Ayisumma(AIR 1996 S.C.2750).**

4. Thus, in my view, this application should succeed. The same is granted in terms of prayer clause (a) on condition that Applicant shall pay costs quantified at Rs.5,000/- to the respondent.

The amount of costs will have to be forthwith recovered from the concerned clerk who was responsible for the delay in filing of the present appeal and not to be borne by the corporation or spent out of public exchequer.